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American Bar Association Themes



HE RECENT forty-sixth annual convention of the American Bar Association considered many subjects of high importance to the legal profession and to the nation.

The masterly address of Hon. John W. Davis, as President of the Association, contained many valuable suggestions and recommendations.

He urged the appointment, under congressional authority, of an expert commission to codify the Federal statutes. Also the adoption of a constitutional amendment permitting the President of the United States to veto specific items in an appropriation bill.

Another proposal was that treaties with foreign countries may be ratified by the Senate by a majority vote, instead of the two-thirds vote now required. He said:

"At the mere mention of the subject, memory reverts to the long and bitter struggle over the treaty of Versailles, and apprehension looks forward to the coming debates upon our adherence to the World Court; but the question rises far beyond these mere incidents and demands consideration upon the merits.

"A treaty entering the Senate is like a bull going into the arena; no one can tell just how or when the final blow will fall—but one thing is certain, it will never leave the arena alive. . . . Nor does it contribute either to national influence, prestige, or safety that the process of ratifying or rejecting treaties should degenerate into an effort to discover some qualifying formula acceptable to a minority. There is grave danger in forgetting that, whether in matters domestic or foreign, the business of government is to govern."

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Two other recommendations as to constitutional amendments, made by Mr. Davis, may be found in the frontispiece of this number of Case and Comment.

He repeated the hope expressed in the Association's resolution last year, that a way may be found by which the government of the United States may avail itself of the Permanent Court of International Justice.

"Apparently," he stated, "there is reason to believe that this hope is not long to be deferred, and that America, true to herself and to her oft-repeated professions, is ready to take her stand in favor of the great experiment. Our late lamented Chief Magistrate, whose untimely passing still casts a shadow over all American hearts, has made his testament to his fellow countrymen, and it cannot be that they will fail in its execution. We cannot pretend that our wish, so modestly expressed, has brought matters to their posture; but perhaps, on the other hand, the assurance of our continued approval and support will be not unwelcome to those upon whom responsibility for the nation's course must now descend.

"We may congratulate ourselves, I trust, that the issue will be decided without regard to partisan considerations. Politics, we are often told, should end at the 3-mile limit; yet where disagreement

exists, as disagreement must, upon matters of foreign policy, it is a mere counsel of perfection to advise political parties to ignore it, or to refuse a vigorous espousal of the one or the other view. But here is a principle to which all political parties stand committed by repeated platform declarations and by the voices of their authorized spokesmen; and here is an institution whose creation America has been tireless in pressing upon the world by precept and by example. Even so, the most robust optimism cannot conceal the fact that opinion on the subject is not to be unanimous."

Commenting upon efforts to abridge the powers of the Supreme Court of the United States, especially as to majority decisions and veto power over acts of Congress, President Davis said:

"In attempting to destroy or limit the power of the Supreme Court to adjudicate upon the constitutionality of legislation we are giving up at one stroke not merely our belief in the separation of judicial and legislative powers, but our reliance upon the Constitution as the supreme law of the land."

"When proposals (to curtail the powers of the Supreme Court) are reduced to their simplest terms, they stand forth naked and undisguised as an attack upon our theory of government under a written constitution."

The Red Menace.

Conditions demand continuation and extension of service on behalf of better citizenship in the United States, R. E. L. Saner, of Dallas, Texas, told the Association, in giving the report of the committee on American citizenship. He said: "It is stated on competent authority that there are 1,500,000 radicals in this country who are clamoring for a change in our government from its present form to one of various degrees of communistic state. It is said there are four hundred newspapers and periodicals that represent similar views, and that are read by five million people. It is also said that \$3,000,000 was spent during the past year in behalf of 'Red' propaganda.

"We submit that the time has come when members of the bar should bestir themselves in a unified effort to meet this challenge. Such unified activity has, as a matter of fact, been already too long delayed."

Simplify Laws.

In addresses before the conference of American Bar Association delegates and before the Minnesota Bar Association, Chief Justice Taft urged the necessity for simplification of laws to speed up justice. He ascribed the tendency to hold the judiciary in lighter esteem than formerly to the "snail-like pace of justice, which discourages and finally wears out the man of small means."

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Uniform Judicial Procedure.

Uniform campaigns and concerted action demanding that congressional committees report out bills designed to modernize and make uniform the procedure in the Federal courts were recommended in the report by the committee on uniform judicial procedure, of which Thomas Wall Shelton is chairman. The report declared the same bills previously approved by the Association will be introduced again in Congress in December.

Officers for Ensuing Year.

Mr. Robert E. Lee Saner, of Dallas, Texas, who has long been active in the work of the Association, was unanimously chosen its President for the ensuing year.

Mr. Saner was a member of the Texas Commission on Uniform State Laws from 1920 to 1922, and was President of the Texas Bar Association in 1911.

Other officers elected are: Frederick E. Wadhams of Albany, New York, re-elected treasurer; W. Thomas Kemp, Baltimore, re-elected secretary; and members of the executive committee, former Governor Charles S. Whitman, New York; Thomas W. Blackburn, Omaha; William B. Smith, Hartford, Connecticut; S. E. Ellsworth, Jamestown, North Dakota; Thomas W. Shelton, Norfolk, Virginia; A. T. Stovall, Okolona, Mississippi; Guernsey E. Nowlin, Los Angeles, and Fred A. Brown, Chicago.

The Monroe Doctrine—A Policy of Self-Defense

THE FOLLOWING are some of the striking expressions in the address of Secretary of State Hughes on the Monroe Doctrine, before the American Bar Association in Minneapolis:

"The Monroe Doctrine is not a policy of aggression; it is a policy of self-defense. It was asserted at a time when the danger of foreign aggression in this hemisphere was very real. It still remains an assertion of the principle of national security.

"As the policy embodied in the Monroe Doctrine is distinctively the policy of the United States, the government of the United States reserves to itself its definition, interpretation, and application.

"The policy of the Monroe Doctrine does not infringe upon the independence and sovereignty of other American states. Misconception upon this point is the only disturbing influence in our relations with Latin-American states.

"So far as the region of the Carribbean sea is concerned, it may be said that if we had no Monroe Doctrine we should have to create one. This implies no limitation on the scope of the original doctrine, but simply indicates that new occasions require new applications of an old principle, which remains completely effective.

"The Monroe Doctrine as a particular declaration in no way exhausts American right or policy. The United States has rights and obligations which that doctrine does not define.

"The Monroe Doctrine does not stand in the way of Pan-American co-operation; rather, it affords the necessary foundation for that co-operation in the independence and security of American states.

"The Monroe Doctrine is not an obstacle to a wider international co-operation, beyond the limits of Pan-American aims and interests, whenever that co-operation is congenial to American institutions. From the foundation of the government we have sought to promote the peaceful settlement of international controversies.

"Our attitude is one of independence, not of isolation. Our people are still intent upon abstaining from participation in the political strife of Europe. They are not disposed to commit this government in advance to the use of its power in unknown contingencies, preferring to reserve freedom of action in the confidence of our ability and readiness to respond to every future call of duty. They have no desire to put their power in pledge, but they do not shirk co-operation with other nations whenever there is a sound basis for it and a consciousness of community of interest and aim.

"Co-operation is not dictation, and it is not partisanship. On our part it must be the co-operation of a free people drawing their strength from many racial stocks, and a co-operation that is made possible by a preponderant sentiment permitting governmental action under a system which denies all exercise of autocratic power."

Justice William R. Day



LIFE, largely passed in distinguished public service, ended on July 9, when former Associate Justice Day, of the United States Supreme Court, died at his cottage on Mackinac island, where he had spent his summers for the past forty years.

He came from a long line of lawyers. His father was Judge Luther Day, of the Ohio Supreme Court, and on both sides of his family there had been men eminent in the law. After graduating from the University of Michigan he followed the family traditions and became a practising lawyer. He soon attained prominence, and was elected judge of the common pleas court.

Mr. Day owed his first selection for an important public office to his friendship for President William McKinley, who knew and admired the sterling qualities of the modest Ohio judge, and who called him from comparative obscurity to a position in which he directed the critical affairs of the State Department during the days preceding the war with Spain. How well he filled the office of Secretary of State was expressed later by President McKinley when he said: "Day absolutely never made a mistake."

To him later came the work of restoring peace. The President selected him as chairman of the

commission of the United States to meet the commissioners of Spain in drafting a treaty to end the war. The Treaty of Paris is a monument to him. His colleague on the commission, Senator George Gray, of Delaware, paid him this tribute: "No state in this Union could have contributed to that function, or any other great diplomatic function of statecraft, a mind and a character more equi-poised, settled, clear, and strong than was contributed by Ohio when she sent that quiet, sensible, strong statesman, William R. Day, to Paris to conclude the treaty of peace. Always self-contained, never self-exploitative, always self-suppressed, yet firm and courageous in the performance of duty as he saw it, he has illustrated the very highest traits of American statesmanship and American character in the work that we brought home with us from the other side of the ocean."

President McKinley appointed Mr. Day United States circuit judge of the sixth judicial circuit. He resigned that post to become an Associate Justice of the Supreme Court in February, 1903. He served in that position for nineteen years, ably and impartially. His great learning was early recognized by his associates, and he was selected to prepare some of the most important opinions of the

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court, including those in *United Shoe Machinery Corp. v. United States*, 258 U. S. 451, 66 L. ed. 708, 42 Sup. Ct. Rep. 363, and *United States v. Southern P. Co.* 259 U. S. 214, 66 L. ed. 907, 42 Sup. Ct. Rep. 496. He wrote the dissenting opinion in *United States v. United States Steel Corp.* 251 U. S. 417, 64 L. ed. 343, 40 Sup. Ct. Rep. 293, 8 A.L.R. 1121, where the court divided four to three.

From his summer home in Quebec province, Canada, Chief Justice Taft directed that the statement contained in a letter written to Justice Day on his retirement last December by his colleagues on the Bench be made public as an official expression of the highest court. This letter, addressed affectionately to "Dear Brother Day," reviewed his twenty years of judicial work, and continued:

"The thorough preparation you

had had for effective work here manifested itself at once. Your service has covered two decades. Your opinions appear in sixty-seven volumes of our reports. But it is not only in the published opinions, their number, their clearness, and their force, great as they are, that the value of your service is to be measured. We who have sat with you in conference know how much you have contributed to our counsels from your wealth of judicial experience, your accurate knowledge of the scope of our previous decisions, and your remarkable familiarity with the adjudged limits of our jurisdiction.

"We shall miss much your loyalty to the court and its traditions, your affectionate fellowship, your wit and humor, and your unfailing tranquillity and good sense.

"Your separation from the court is a real personal sorrow to us."

Square Dealing

A LAWYER wrote from Alaska a few months ago to the Bancroft-Whitney Company, of San Francisco, asking them how much he owed them on a bill for law books that he contracted many years ago, while practising in one of our western states. A reply was sent, saying they had no record of any indebtedness whatever due from him, but that anything that he might have owed them must have been before the great San Francisco fire, which destroyed absolutely every record and memorandum of their ac-

counts. He wrote back again, saying that he remembered that before he left the place where he used to practise he owed them a bill that he thought was between \$24 and \$35; so he sent along a check for \$35 to pay an account which was long ago outlawed, and of which the creditor had neither evidence nor remembrance. He feels better now; so does the publisher. Everybody is satisfied except possibly those who are looking for cynical slams on the legal profession.

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Constitutionality of Statute Preventing Waste of Natural Resources



THE WEIGHT of authority — numerically, at least—is to the effect that not only adjoining landowners, but the public at large, have an interest in the preservation of natural resources of land, such as gas, oil, timber, subterranean waters, sufficient to justify appropriate legislation to prevent exploitation or waste thereof by the owners of land on which they are found.

However, it has been held that where the underlying minerals are a part of the realty, and the rule of property is that the owner of the surface is the absolute owner in fee of everything permanently situated beneath the surface, a state statute enacted for the purpose of preventing the wasting thereof by the owner, to the detriment of the public at large, is un-

constitutional. Thus, in the case of *Gas Products Co. v. Rankin*, 63 Mont. 372, 207 Pac. 993, annotated in 24 A.L.R. 294, it is held that a Montana statute, declaring the burning of natural gas without utilizing all the heat therein contained for other manufacturing or domestic purposes to be wasteful and unlawful, unconstitutionally deprives owners of their property without due process of law, and constitutes a taking of private property for public purposes without making just compensation. It should be noted that the court, in reaching this conclusion, expressly points out the distinction between cases arising in jurisdictions where the underlying minerals are common property until reduced to possession, and jurisdictions like Montana where that rule of property does not obtain.

Tax — classification — anthracite coal. Where the legislature has constitutional authority to classify for purposes of taxation, it is held, in *Heisler v. Thomas Colliery Co.* 274 Pa. 448, 118 Atl. 394, annotated in 24 A.L.R. 1215, that it may lay a tax on anthracite coal while not laying one on bituminous coal.

Tax — inheritance — absentee's estate. That the imposition of taxes on the estates of all deceased persons does not include an estate which is administered under the statutes because of absence of its owner is held in the Iowa case of *Re Kite*, 187 N. W. 585, 24 A.L.R. 850, which seems to be a case of first impression.

Right of Photographer to Make Copies of Portrait



HE AUTHORITIES are practically agreed that a photographer who is employed to make a negative and photographs for another, in the usual course of the former's business, has no right to use the negatives for his own purposes, the theory generally being that there is an implied contract that the photographer shall not use the plates, although some cases have asserted the additional grounds of violation of confidence, or right of property.

"The usual contract between a photographer and his customer," states the court in *Lumiere v. Robertson-Cole Distributing Corp.* 280 Fed. 550, 24 A.L.R. 1317, "is one of employment. The production of the photograph is work done for the customer, not for the photographer, and the sitter is entitled to all proprietary rights therein. The work is done for the person procuring it to be done, and the negative, so far as it is a picture, or capable of producing pictures, of that person, and all photographs so made from it, belong to the person. Neither the artist nor anyone else has any right to make pictures from the negative, or to copy the photographs, if not

otherwise published, for anyone else."

But the general rule heretofore discussed does not apply, where a photographer takes a photograph gratuitously, for his own benefit and at his own expense, it having been held that, under such circumstances, he is the owner of the photographs and the negatives.

Several cases raise the question as to who, as between the photographer and the sitter, is entitled to a copyright. Upon this phase of the question it has been held to follow, from the rule that one who employs a photographer in the usual course to take his picture, or one who sends the sitter to be photographed, for pay, is the owner of the negative and the photograph, that he is entitled to the copyright as against the photographer. But the right to copyright photographs is in the photographer when he solicits persons to come to his studio and takes pictures of them gratuitously, or for his benefit, or at his expense.

In *Press Pub. Co. v. Falk*, 59 Fed. 324, it was held that one who photographed an actress in her public character gratuitously for his own benefit, but with the understanding that she could have as

many of the photographs as she wanted, to do with as she pleased, was entitled to the exclusive copyright rights, and that the sitter's rights did not extend to making copies, or to giving others the right to do so. And, where the members of a high-school class engaged a photographer to photograph the class, under an agreement by which he was to receive only such pay as he might receive on in-

dividual sales to the members of the class, it was held in *Altman v. New Haven Union Co.* 254 Fed. 113, that the property right in the photograph did not belong to the class, but to the photographer, and consequently that the photograph was copyrightable by him.

The cases discussing the respective rights of photographer and sitter in the photograph may be found in a note in 24 A.L.R. 1320.

Duty of Driver of Front Car to Following Vehicle



HE DRIVER of a truck which prevents persons riding behind it from seeing the road ahead, who, with knowledge that a bicycle rider is close behind him, when he is going rapidly downhill, suddenly stops without warning just as automobiles coming from the opposite direction are about to pass him, so that the bicycle rider, to avoid collision with the truck, is forced into the roadway directly in the path of the on-coming automobiles, and injured, is held to be guilty of negligence which will render him liable for the injury to the bicycle rider, in *Simpson v. Snellenburg*, 96 N. J. L. 518, 115 Atl. 403, 24 A.L.R. 503. It is further held that the

bicyclist was bound to exercise only the care of an ordinarily prudent person when the truck stopped suddenly, without warning, so that it was impossible for him to stop before he reached the truck; and that he could not be charged with contributory negligence as a matter of law in turning to the left to pass the truck, directly into the path of the automobile coming from the opposite direction, of the presence of which he was ignorant.

The reciprocal duties of drivers of automobiles or other vehicles proceeding in the same direction are considered in a note which accompanies the foregoing decision in 24 A.L.R. 507.

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Transportation of Liquor in Different Parishes as Distinct Offenses



AN INTERESTING case involving the question whether the possession and transportation of the same intoxicating liquor on the same day through two territorial subdivisions of a state constitutes two offenses, so that the accused may be tried in one after conviction in the other, is the Louisiana decision of *State v. Roberts*, 93 So. 95, 24 A.L.R. 1122. In this case the accused was pursued by the sheriff of one parish, but escaped into another where he was arrested. He was tried and convicted in the parish from which he had fled. Subsequently he was prosecuted in the county in which he was arrested. The court held that the transportation of the liquor in the two parishes on the same day constituted but a single violation of the statute, for which he could not be prosecuted in both.

This decision, which seems to be

one of first impression, is based on the theory that the transportation of intoxicating liquor for beverage purposes, in violation of a statute, is an offense against the state, and not against the various jurisdictions or subdivisions of the state, and that the transportation in the instant case constituted but a single continuing offense. As stated in Wharton on Crimes, vol. 2, ¶ 1817, "When there is such continuousness, there can be but a single prosecution, and one prosecution for a section or part of the things taken absorbs the offense. If the prosecutor elects to take such a section, he cannot spin out the prosecution into a series of cases. Such is the reasoning by which eminent German jurists have reached the conclusion that for a continuous offense there can be but a single prosecution, unless some extrinsic force necessitates the breaking of the offense into fragments."

Intoxicating liquor — forfeiture of taxicab for transporting. A taxicab called to a saloon at 2 A. M., and loaded with intoxicating liquor for transportation to a distant city, may be forfeited, it is held, in *Pittsburgh Taxicab Co. v. United States*, 281 Fed.

669 annotated in 24 A.L.R. 1125, if it undertakes the journey, where the circumstances were such as not only to charge the driver with notice of the purpose of the trip, but his communication with officers of the owner was such as to put them on guard against violation of the law.

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Total Disability Within Accident Policy



IN VIEW of the variations in the provisions of accident insurance policies and in the circumstances of the individual cases, it is impossible to reduce to a definite formula the decisions as to what constitutes total and continuous disability within the meaning of such policies. The weight of authority seems to support the view that it is not necessary that the accident shall render the insured absolutely helpless; but that such a disability as renders him unable to perform the substantial and material acts of his business or occupation in the usual and customary way is sufficient to entitle him to recover under the policy. The view is taken in some cases that there is a total disability if the insured's injuries are such that common care and prudence require him to desist from his business in order to effectuate a cure.

The cases treating of disabilities in a number of particular kinds of business or occupations are gathered in a note in 24 A.L.R. 203. A few cases have considered the question in its relation to members of the legal profession.

The insured was held to be "totally disabled" in *Fidelity & C.*

Co. v. Logan, 191 Ky. 92, 229 S. W. 104, where it appeared that he was a lawyer who devoted most of his time to his coal and timber interests, and that shortly after an injury he was obliged to resign from the draft board; that he was able to do much less than one third of his usual work; that care and prudence required him to desist from transacting his usual business, although he was able to write or dictate letters occasionally, and to visit his office at times, and to go to some of his properties. Likewise, the insured was held in *Hefner v. Fidelity & C. Co.* 110 Tex. 596, 160 S. W. 330, affirmed in 110 Tex. 613, 222 S. W. 966, to be totally disabled within the meaning of a provision for indemnity in case the insured was totally and wholly disabled from performing any and every kind of duty pertaining to his occupation, where the evidence showed in substance that he was a lawyer, and was not prevented by the accident from performing all the duties of his profession, but was unable to perform many of the duties incident thereto, among which were work in the library, and taking charge of and conducting lengthy cases in court.

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Judges and lawyers in their opinions and briefs respectively, contained in a single volume of current cases, cited L.R.A. 510 times, which would seem to indicate that the Bench and Bar throughout the country are finding L.R.A. (Lawyers' Reports Annotated) an authority worth using. (Send for L.R.A. Booklet L-93 on post card inside back cover.)



But in *United States Mut. Acci. Asso. v. Millard*, 43 Ill. App. 148, there was held to be no liability under a policy providing for indemnity for loss of time resulting from bodily injuries which "shall immediately, wholly, and continuously disable from the transaction of any and every kind of business pertaining to his profession as an attorney at law," where the injury did not wholly and continuously disable the insured attorney from the transaction of any kind of business pertaining to his profession, although the injury prevented the use of his hand for twenty-six weeks, and he suffered pain and could not write, but attended his office, advised clients, accepted employment, and commenced suits.

Brides in Old Egypt

PROFESSOR W. Flinders Petrie, the eminent Egyptologist, who was recently knighted by King George, gives some interesting information regarding the private life of the ancient Egyptians. The earliest marriage contract known in Egypt, he says, dates from 590 B. C. The terms of the pact, as drawn up by the husband, were as follows:

"Since God willeth that we should unite one with the other in righteous wedlock, therefore I have given thee \$4 in gold as a bridal gift. And for my part, I will not neglect thee more than as it were my own body. Neither shall I be able to put thee forth without a cause, having legal ground. But should I wish to put thee forth, I will pay \$17 for the matter."—*New York Evening Post*.

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Gleanings from Our Correspondence

LAW AND GRACE.

Editor CASE AND COMMENT:

Your report of "Law and Grace" in current Case and Comment recalls the unique ending of a trial in Commissioner's Court in Fairbanks, Alaska:

An eighteen-year-old youth recently from the "outside" was charged with embezzlement of a gun less than \$35 in value, intrusted to his care some days theretofore by a companion on a hunting trip. An assistant United States attorney appeared for the United States. The defendant appeared for himself. It was proved that the defendant had carried the gun back from the hunting trip, and the next day, without the owner's knowledge, had pawned it for \$10, receiving \$9, and had been unable to deliver the gun to its owner on demand. He admitted these facts and urged that he was expecting money from home, which had not come, and that he pawned the gun that he and his "buddy" might go to the dance of the evening, but with the intention of redeeming and returning it. After argument and instruction, the twelve jurors returned a verdict of "not guilty" and each advanced to a common fund the \$1 allowed him for jury service by Uncle Sam (who says he is extravagant?), with which they redeemed the gun, returned it to its owner, and presented to the defendant \$2 to assist him 'till his money came, which was three days later.

E. C. Hill.

Ruby, Alaska.

A MISNOMER.

We suggest for Case and Comment the case of *Loser v. Plainfield Sav. Bank*, 149 Iowa, 672, 128 N. W. 1101, 31 L.R.A. (N.S.) 1112, in which Loser was not the loser.

Griffin, Griffin, & Griffin.
Sioux City, Iowa.

STRONG ARM STUFF.

The boy could not drive the horse up on foot, so his mother took a horse that was hitched to the fence near the house and carried it to him. *Gorman v. State*, 42 Tex. 221.

J. W. Earnest.

Austin, Texas.

A DEFLATED FARMER.

The firm of Pors, Edwards, & Pors, Marshfield, Wisconsin, received the following communication from a rural debtor:

Dear Sirs:

"You folks must think we can live on wind out in the country or grab a club and knock the dollars out of a cow. . . . But when you folks say it *must* be paid by Saturday, *must* and *can't* are two different things. For I can't pay by that time. All that I can do if you want it before Saturday is to give you a Mortgage on my Soul, and if that goes to H—, you are out of luck."

POWER OF COURT TO AMEND JUDGMENT AFTER AFFIRMANCE.

We are indebted to H. H. Nordlinger, Esq., for a reference to cases illustrating the New York rule as to the power of the court to amend a judgment after affirmance. He cites *McKelvey v. Lewis*, 12 Jones & S. 561; *Typothetæ of New York v. Typographical Union*, 66 Misc. 484, 123 N. Y. Supp. 967, 138 App. Div. 293, 122 N. Y. Supp. 975; *Clark v. Scovill*, 133 App. Div. 821, 118 N. Y. Supp. 235, 198 N. Y. 279, 91 N. E. 800. A fortiori a court has power to amend its judgment pending an appeal therefrom, *Birnbaum v. May*, 170 N. Y. 314, 63 N. E. 347; *Health Dept. v. Dassori*, 159 N. Y. 245, 54 N. E. 13; *National City Bank v. New York Gold Exch. Bank*, 97 N. Y. 645.

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Recent Important Cases

Abatement — action for alienation of affections — death of defendant. That a right of action for alienation of affections is one for injury to the person, within the meaning of a statute providing that such actions shall not survive the death of defendant, is held in *White v. Safe Deposit & T. Co.* 140 Md. 593, 118 Atl. 77, annotated in 24 A.L.R. 482.

Automobile — failure to sound horn when turning into private driveway — negligence. The driver of an automobile about to turn from the highway across a sidewalk into a private driveway after dark, when the machine is traveling at low speed and his headlights are burning, cannot, it is held in the Wisconsin case of *Henderson v. O'Leary*, 187 N. W. 994, annotated in 24 A.L.R. 942, be found to be negligent in failing to sound his horn to warn pedestrians of his approach, if, in his judgment, the course of his lights upon the ground is adequate for that purpose.

Automobile — stopping on highway to make repairs — negligence. One driving an automobile on a public highway is held not negligent in stopping on the left side of the road to make repairs to his engine, although there was opportunity to turn off the road for that purpose, in the Wisconsin case of *Schacht v. Quick*, 190 N. W. 87, annotated in 25 A.L.R. 130.

Bigamy — effect of belief on degree of guilt. That punishment for bigamy cannot be mitigated by the fact that the second marriage was contracted in accordance with religious belief is held in the Indiana case of *Long v. State*, 137 N. E. 49, annotated in 24 A.L.R. 1234.

Bills and notes — deposits in bank — bank as bona fide holder. A bank receiving and crediting a draft to the account of its depositor does not become a bona fide holder so as to be entitled to the proceeds as against a creditor of the depositor, if the amount is not absorbed by an existing debt or exhausted by checks of the depositor after crediting subsequent deposits, and therefore the bank cannot, it is held in *National Bank v. Morgan*, 207 Ala. 65, 92 So. 10, annotated in 24 A.L.R. 897, claim the funds in the hands of its correspondent who has collected them and has been garnished for a debt of the depositor.

Commerce — interstate — injury to employee in ash pit. An ash pit or cinder pit where are dumped the ashes and cinders from engines engaged both in intrastate and interstate commerce, and which is a necessary facility in the operation of the railway, is also a facility or instrumentality used in interstate commerce, and persons engaged in cleaning out or emptying such pit are held to be engaged in work in furtherance of such commerce, in the Minnesota case of *Stavros v. Chicago, M. & St. P. R. Co.* 186 N. W. 942.

What employees are engaged in interstate commerce within the Federal Employers' Liability Act is discussed in the note appended to the foregoing case, in 24 A.L.R. 634.

Contract — rescission — effect on previous breaches. When an executory agreement partly performed is mutually canceled, express reservation is held necessary to preserve any right to recover unliquidated damages arising out of a previous breach thereof, in the Virginia case of *Juniper Lumber Co. v. Nelson*, 112 S. E. 564, annotated in 24 A.L.R. 247.

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Contract — to supply requirements — mutuality. A contract not under seal, by a manufacturer, to supply the requirements of a jobber with a particular article for a specified season, with no obligation on the buyer except to pay a certain price for material received, is held to be void for want of mutuality, in *Oscar Schlegel Mfg. Co. v. Peter Cooper's Glue Factory*, 231 N. Y. 459, 132 N. E. 148, to which is appended a note, in 24 A.L.R. 1348, on the mutuality and enforceability of a contract to furnish another with his needs, wants, desires, requirements, etc., of a certain commodity.

Contract — validity — influence for one accused of crime. An agreement by one defrauded by false pretenses that, in case a relative of the offender will give his note for the amount of the loss, the defrauded person will intercede with the court and induce it to be lenient with the offender is held, in *Aycock v. Gill*, 183 N. C. 27, 111 S. E. 342, annotated in 24 A.L.R. 1449, to be against public policy and to render the note void.

Conversion — repledge by broker of stock pledged with him. A broker with whom stock is pledged to secure unpaid purchase money due him is held, in *Turner v. Schwarz*, 140 Md. 465, 117 Atl. 904, annotated in 24 A.L.R. 444, to be guilty of conversion if he repledges it for his own debts to a larger amount than the amount due him, so as to place it beyond his power to return it, or stock of the same kind, upon satisfaction of his claim.

Criminal law — convicting aider of higher crime than principal. That an aider or abettor in the commission of a felony may be convicted of a felony at a subsequent term of court, although the principal has been acquitted of the crime charged, or convicted of a mere misdemeanor, is held in *Christie v. Com.* 193 Ky. 799, 237 S. W. 660.

A note on the acquittal or conviction of a lower degree of offense as

affecting prosecution of aider or abettor is appended to the foregoing case in 24 A.L.R. 603.

Descent — through mother of illegitimate. A mother cannot inherit from the descendants of her illegitimate child under a statute providing that in the absence of parents, widow, brothers, or sisters the estate shall descend in equal parts to the next of kin of the intestate in equal degrees, and it is held in *Hardesty v. Mitchell*, 302 Ill. 369, 134 N. E. 745, annotated in 24 A.L.R. 565, that therefore her child cannot inherit through her from such descendant.

Divorce — allowance of suit money to husband. Statutory imposition of the expenses of the family upon both husband and wife and an authorization of such orders in divorce proceedings as may be deemed right and proper are held, in the Washington case of *State ex rel. Jacobson v. Superior Ct.* 207 Pac. 227, annotated in 24 A.L.R. 488, not to authorize an allowance of temporary maintenance, suit money, and attorneys' fees against the wife in favor of the husband, where the statute expressly provides for such orders relative to the expenses of such action as will insure to the wife an efficient preparation of the case and a fair and impartial trial.

Divorce — cruel treatment — single act. That a single act of physical violence may so endanger the life of the one against whom it is committed as to come within a statutory provision for divorce, if either spouse shall be guilty of such cruel and barbarous treatment as to endanger the life of the other, is held in *Crabtree v. Crabtree*, 154 Ark. 401, 242 S. W. 804, which is followed in 24 A.L.R. 912, by a note on single act as basis of divorce or separation on ground of cruelty.

Estoppel — effect of acquisition of title by grantor. The doctrine of title by estoppel where a grantor without title, having conveyed with warranty,

subsequently secured the title, does not apply against a grantee of such grantor of a prior registered title, and therefore a purchaser under a duly registered mortgage title which was foreclosed, the property purchased by the mortgagor, and conveyed to him, is held to prevail in *Builders' Sash & Door Co. v. Joyner*, 182 N. C. 518, 109 S. E. 259, annotated in 25 A.L.R. 81, over a claimant under a warranty deed by the mortgagor, made and registered subsequently to the registry of the mortgage, notwithstanding the title vested in the mortgagor after his warranty.

Evidence — *injuries sustained on running board.* That the rule *res ipsa loquitur* applies where a passenger on the running board of a street car is injured by collision with a motor truck on the highway is held in *Plumb v. Richmond Light & R. Co.* 233 N. Y. 285, 135 N. E. 504, annotated in 25 A.L.R. 685.

False pretenses — *confidence game — obtaining renewal of loan.* That the obtaining of a renewal of a loan is not obtaining money or property within the meaning of a statute providing punishment for one who shall obtain money or property by means of the confidence game, is held in *State v. Frusha*, 150 La. 995, 91 So. 430, annotated in 24 A.L.R. 394.

Forcible entry and detainer — *equitable defense.* The defense in forcible entry and detainer actions it is held, in the Nebraska case of *Farmer v. Pitts*, 187 N. W. 95, may be equitable as well as legal under the Nebraska Civil Code, and the tenant will be relieved from a technical forfeiture when absolute good faith is shown, and the circumstances are such as to call for the exercise of equitable principles in his behalf to prevent gross injustice.

A note on the power of equity to relieve against forfeiture of lease for nonpayment of rent is appended to the foregoing case in 24 A.L.R. 724.

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Fraud — Blue Sky Law — to whom applicable. The so-called Blue Sky Law is held in the Minnesota case of *Gutterson v. Pearson*, 189 N. W. 458, annotated in 24 A.L.R. 519, not to prohibit a person who is the absolute owner of stock issued by a company which does not, either itself or through others, engage in the business within this state, of selling its stock or securities, from selling such stock.

Gas — liability for fire resulting from escape. That failure of a gas company to repair a gas leak after reasonable notice will render it liable for any injury occurring because of a fire which is the direct result of the escaping gas, is held in *McClure v. Hoopestown Gas & E. Co.* 303 Ill. 89, 135 N. E. 43, annotated in 25 A.L.R. 250.

Guardian — for adult child — power. That a parent is without power to appoint a testamentary guardian for an adult child, though such child be an imbecile, is held in *Hemp-hill v. Smith*, 128 Miss. 586, 91 So. 337, 24 A.L.R. 1456, which seems to be a case of first impression.

Health — liability of officer — quarantine. A local health officer, in quarantining a patient whom a physician had pronounced suffering from smallpox, acts in a ministerial and not in a judicial or quasi judicial capacity, and is held liable in *Moody v. Wickersham*, 111 Kan. 770, 207 Pac. 847, annotated in 24 A.L.R. 794, for damages caused such patient by his treatment.

Highway — effect of turning to left. If it is impracticable for a traveler on a highway to turn to the right, he may hold his position, but he is held not justified, in *Cupples Mercantile Co. v. Bow*, 32 Idaho, 774, 189 Pac. 48, annotated in 24 A.L.R. 1296, in turning to the left, and if he does so he thereby violates the law.

Homicide — defense of property — necessity. Absence of reasonably apparent necessity for the shooting is held in *State v. Terrell*, 55 Utah, 314, 186 Pac. 108, to destroy the right to invoke the protection of a statute justifying homicide when committed in defense of habitation, property, or person against one who manifestly intends, or endeavors by violence or surprise, to commit a felony.

An extensive note on homicide or assault in defense of habitation or property accompanies this case in 25 A.L.R. 497.

Homicide — implication of malice — blow with fist. That malice or an intent to kill will not ordinarily be implied from a blow with the fist upon a person of mature years and full health is held in *McAndrews v. People*, 71 Colo. 542, 208 Pac. 486, annotated in 24 A.L.R. 655.

Injunction — against erection of bathhouse on foreshore. That an injunction lies against the erection by a town owning the foreshore on tidal waters, of a bathhouse for public use upon such foreshore in such manner as to interfere with the rights of the riparian owner, is held in *Tiffany v. Oyster Bay*, 234 N. Y. 15, 136 N. E. 224, annotated in 24 A.L.R. 1267.

Insurance — action — death from erysipelas. The death of a physician from erysipelas due to the infection of a boil while attending a patient professionally is held not caused by violent, external, and accidental means within the meaning of an accident insurance policy, in the Rhode Island case of *Kimball v. Massachusetts Acci. Co.* 117 Atl. 228, annotated in 24 A.L.R. 726.

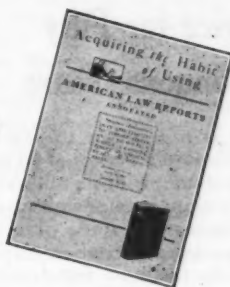
Insurance — attempted escape after crime. An exception from liability on an insurance policy of death while committing a crime is held in *Jordan v. Logia Suprema De La Alianza Hispano-Americana*, 23 Ariz. 584, 206 Pac. 162, annotated in 24

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A.L.R. 974, not to include death by the accidental discharge of one's own weapon while attempting to escape after the commission of a crime.

Insurance — effect of surrender of certificate. The surrender of a mutual benefit certificate for substitution of beneficiary is held not to effect a cancellation until a valid certificate is issued in its place, in *McGough v. Women's Catholic Order of Foresters*, 175 Wis. 607, 185 N. W. 174, annotated in 24 A.L.R. 746.

Insurance — payment to administrator in foreign state. That an insurance company may pay a policy to an administrator appointed in a state where it is authorized to do business, and who has possession of the policy, although the insured resided in another state, notwithstanding it has notice that administration is pending in the state of the residence of the insured, is held in *Rice v. Metropolitan L. Ins. Co.* 152 Ark. 498, 238 S. W. 772, annotated in 24 A.L.R. 143.

Insurance — theft — swindling. Under a contract of insurance issued to protect a dealer in automobiles against "theft, robbery, or pilferage," the act of a swindler who deprived the insured of an automobile by means of a preconceived plan, which involved impersonation, misrepresentation, and fraud, is held, in *Hill v. North River Ins. Co.* 111 Kan. 225, 207 Pac. 205, annotated in 24 A.L.R. 735, to be a species of "theft" for which the insurance company is liable.

Landlord and tenant — notice to quit — attested copy as duplicate. Leaving a true and attested copy of the original notice to quit with a tenant is held not sufficient, in *Lorch v. Page*, 97 Conn. 66, 115 Atl. 681, annotated in 24 A.L.R. 1204, where the statute provides that a duplicate copy of such notice shall be left with him.

Annotations That Are Exhaustive Briefs

Libel — sealed letter to person libeled. One sending a sealed letter to a fourteen-year-old boy is held guilty of libel in *Hedgpeth v. Coleman*, 183 N. C. 309, 111 S. E. 517, if he shows the letter to relatives, where it threatened him with imprisonment, since the sender has reasonable ground to know that the letter will be seen by a third person, and his act is the proximate cause of the publication.

A note on the communication of defamatory matter only to person defamed as a publication which will support a civil action is discussed in 24 A.L.R. 237.

Master and servant — act not within scope of employment. A slander uttered by the route agent to a special agent of an express company while they are standing on a station platform, with reference to a former employee of the company, is not with respect to any business committed to him by the company, and it is, therefore, held not liable to the person slandered, in the South Carolina case of *Courtney v. American Exp. Co.* 112 S. E. 332, annotated in 24 A.L.R. 128.

Master and servant — compensation for overtime work. In the absence of an express agreement therefor, or of a custom so general, uniform, and certain that it can be said the parties contracted with reference to it, a person employed to perform services for a stated periodic remuneration is held in *Robinette v. Hubbard Coal Min. Co.* 88 W. Va. 514, 107 S. E. 285, annotated in 25 A.L.R. 212, generally not entitled to recover compensation for overtime work of the same character voluntarily performed at the request of his employer.

Master and servant — independent contractor — piling material in streets. The leaving in the street without light, after dark, by an independent contractor, of a pile of material to be used in laying gas

mains, is held in *Pine Bluff Natural Gas Co. v. Senyard*, 108 Ark. 229, 158 S. W. 1091, not so collateral to the work of laying the mains as to relieve the gas company, which had employed the contractor to do the work, from liability for injury to a traveler caused thereby.

The liability of municipal corporations and their licensees for the torts of independent contractors is treated in a note which follows this case in 25 A.L.R. 419.

Municipal corporation — liability for assault by agent in water department. A municipal corporation operating a water-supply system is held answerable in *Munick v. Durham*, 181 N. C. 188, 106 S. E. 665, for an assault committed by its agent upon a consumer in the course of his employment.

The liability of a municipal corporation for the tort of an officer or employee of a water department is considered in the note appended to this case, in 24 A.L.R. 545.

Parent and child — desertion — child cared for by charity. That a father cannot be convicted of desertion of his minor child if it has been placed by the mother, under a satisfactory arrangement, for an unexpired term in a charitable institution which is giving it proper care, is held in *Sackhiem v. State*, 92 Tex. Crim. Rep. 437, 244 S. W. 377, annotated in 24 A.L.R. 1072.

Railroads — absence of fence — liability for injury to cattle straying across right of way onto private property. Statutes requiring railroad companies to fence their rights of way do not, it is held, in the Missouri case of *Ingalsbee v. St. Louis-San Francisco R. Co.* 243 S. W. 323, annotated in 24 A.L.R. 1051, render them liable for injury to cattle by straying, because of absence of a proper fence, onto their rights of way, and from there onto private property, where they are injured.

Schools — liability for furnishing defective machinery. A board of education which, under statutory authority, undertakes to establish a manual training school for the education of children, is held liable in damages for injuries to a child by the use of defective machinery furnished by the board, in *Herman v. Board of Education*, 234 N. Y. 196, 137 N. E. 24, which is followed, in 24 A.L.R. 1065, by a note on the liability of a school district, municipal corporation, or school board for injuries to pupils.

Search and seizure — use of evidence wrongfully obtained — compelling production of papers. The knowledge gained by the Federal government's own wrong in seizing papers in violation of the owners' constitutional protection against unlawful searches and seizures cannot, it is held in *Silverthorne Lumber Co. v. United States of America*, 251 U. S. 385, 64 L. ed. 319, 40 Sup. Ct. Rep. 182, be used by the government in a criminal prosecution by serving subpoenas upon such owners to produce the original papers, which it had returned after copies had been made, and by obtaining a court order commanding compliance with such subpoenas.

The right to enforce the production of papers or documents by subpoena duces tecum or other process, as affected by unlawful means by which the knowledge of their existence was acquired, is considered in the note which follows this case, in 24 A.L.R. 1429.

Witness — credibility — conviction of distilling liquor. The distillation of spirituous liquors, although made a felony by statute, is held not to involve moral turpitude so as to admit evidence of conviction of such offense as affecting the credibility of a witness, in *Ex parte Marshall*, 207 Ala. 566, 93 So. 471, to which is appended a note in 25 A.L.R. 338, on the right to cross-examine the accused as to previous prosecutions for, or conviction of, crime, for purpose of affecting his credibility.

Witness — self-incrimination — constitutional protection — disbarment proceedings. A proceeding to disbar an attorney is held not to be criminal within the contemplation of the constitutional provision that one shall not be required to give evidence against himself, in the California case of *Re Vaughan*, 209 Pac. 353, annotated in 24 A.L.R. 858.

Work and labor — presumption as to gratuitous character of services rendered brother. That there is no presumption that services rendered by a woman in caring for the children of her brother are gratuitous, although they are rendered in the family home of the children's grandparents, where for a portion of the time both brother and sister reside, is held in *Snyder v. Guthrie*, 193 Iowa, 624, 187 N. W. 953, annotated in 24 A.L.R. 950.

Workmen's compensation — effect of death of dependent. In the absence of a legislative declaration to the contrary, the administrator of one to whom an award is made as a dependent under the Workmen's Compensation Act is held entitled to recover the amount of the award from the time of decedent's death to the end of the period covered by the allotment, in *State Acci. Fund v. Goldsborough*, 140 Md. 622, 118 Atl. 159, annotated in 24 A.L.R. 434.

Workmen's compensation — loss of sole eye — method of compensation. The loss of the one eye which an employee possessed when he entered his employment must be compensated, it is held in the Pennsylvania case of *Lente v. Lucci*, 119 Atl. 132, annotated in 24 A.L.R. 1462, under the provision of the statute fixing the amount to be allowed for loss of an eye, and not under the provision providing compensation for permanent disability, although permanent disability results from the accident in connection with the fact that he had previously lost the other eye.

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Utterances During Sleep

A FRENCH magistrate, states the New York Times, has been "confronted by a delicate problem. A man charged with murder presented a seemingly satisfactory alibi, but in prison, while asleep, his cell mate heard him say things that amounted, or nearly, to a confession of guilt. The question is whether that is or is not competent evidence, and admissible—at least, to the extent of necessitating further inquiry as to the reality of the alibi.

"The case is one for psychologists rather than for lawyers or judges to decide, but the lawyers and judges, unfortunately, are slow to utilize the services of psychologists.

"Talking done in sleep has significance as a welling up of the subconscious, but it needs skilful interpretation, and far from always can it be taken at face value. There is something in the old idea that 'dreams go by contraries,' and it is easy to make dream talkers say almost anything by the use of adroit suggestion."

It has been held in the United States that the expressions of a person in sleep are not admissible, for they may be induced without cause, and by past as well as present conditions. In dreams things long forgotten return, and one lives over a past that has no relation to present conditions; and exclamations then made are as likely to be induced by a past as by a present condition. Hence, in an action to recover damages for injuries resulting to a boy from the bite of an alleged vicious dog, it is error to permit the boy's father to testify that the first two or three nights after the boy was bitten, he would, when dropping into a drowse, jump up and call: "Take him off; he is biting me!" Such testimony is hearsay. 10 R. C. L. 961, citing *Plummer v. Ricker*, 71 Vt. 114, 76 Am. St. Rep. 757, 41 Atl. 1045.

A.L.R. Annotations in Volumes 24 and Part of 25 Include Notes on the Following Subjects:

Accord and satisfaction — Payment before maturity of part of a liquidated and undisputed indebtedness as a consideration for its acceptance in satisfaction of the entire debt. 24 A.L.R. 1474.

Action — Right of husband and wife to maintain joint action for wrongs directly affecting both arising from same act. 25 A.L.R. 743.

Appeal — Incompetency, negligence, illness, or the like of counsel, as ground for new trial or reversal in criminal case. 24 A.L.R. 1025.

Appeal — Power of legislature to require appellate court to review evidence. 24 A.L.R. 1267.

Attachment — Right to recover attorneys' fees for wrongful attachment. 25 A.L.R. 579.

Attorney and client — Lien of attorney on public fund or property. 24 A.L.R. 933.

Bailment — Effect of failure to reply to notice of rate at which goods then on premises may be left. 24 A.L.R. 968.

Bankruptcy — Lien by attachment or other process within four months' period as affected by bankrupt's purpose, in filing petition, to avoid lien. 25 A.L.R. 98.

Banks — Right of depositor to rescind, or to claim a trust in respect of, a deposit because of insolvency of bank when it was made. 25 A.L.R. 728.

Banks — Waiver of right of government to preference in the assets of an insolvent debtor by taking security. 24 A.L.R. 1495.

Banks — Trust in proceeds of collections made by charging debtor's account in collecting bank. 24 A.L.R. 1152.

Banks — Bank deposit for purpose of meeting certain checks or classes of checks. 24 A.L.R. 1111.

Bills and notes — Necessity of indorsement by all payees before maturity to make a transferee a bona fide holder. 25 A.L.R. 163.

Bills and notes — When instrument deemed payable at a "special place" within the provision of the Uniform Negotiable Instruments Law making ability and willingness to pay at such place equivalent to tender. 24 A.L.R. 1050.

Carriers — Amount of liability under

second Cummins Amendment where value not declared. 25 A.L.R. 736.

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Evidence — Admissibility of evidence obtained by illegal search and seizure. 24 A.L.R. 1408.

Evidence — Privilege as to family matters or affairs incidentally learned by physician while professionally attending patient. 24 A.L.R. 1202.

Evidence — Confession by one who has been subjected to or threatened with physical suffering. 24 A.L.R. 703.

Gift — Delivery of bill or note of third person by way of gift. 25 A.L.R. 642.

Guaranty — Incapacity of principal to contract as affecting liability of guarantor or surety. 24 A.L.R. 838.

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Judgment — Refusal to entertain an action upon a judgment rendered in another state on a cause of action which it would have been contrary to public policy of the forum to have entertained. 24 A.L.R. 1437.

Judgment — Judgment for rent for particular period as bar to action for rent for subsequent period. 24 A.L.R. 885.

Judicial sale — Steps to be taken by officer before resale upon default of purchaser at judicial or execution sale. 24 A.L.R. 1330.

Landlord and tenant — What is unavoidable or inevitable casualty or accident within provision of lease. 24 A.L.R. 1461.

Life tenant — Conveyance by life tenant and remainderman in esse as cutting off interest of unborn persons under devise for life with remainder to a class. 25 A.L.R. 770.

Limitation of actions — Realization on security deposited as collateral as interrupting the Statute of Limitations. 25 A.L.R. 58.

Martial law — Power to declare martial law apart from military occupation or operations. 24 A.L.R. 1183.

Mistake — Crediting amount to depositor's account as precluding recovery back of money paid to bank by mistake. 25 A.L.R. 129.

Municipal corporations — Restrictions on location of business of undertaker. 25 A.L.R. 764.

Municipal corporations — Power of municipal corporation to provide hospital. 25 A.L.R. 612.

Notary public — Validity and effect of agreement to give bank all, or part, of fees of notary for protesting paper. 25 A.L.R. 170.

Taxes — Tax on automobile or on its use for cost of road or street construction, improvement, or maintenance. 24 A.L.R. 937.

Trust — Trust receipt, or instrument purporting to be such, as a chattel mortgage within filing statutes. 25 A.L.R. 332.

Wills — Validity of bequest or devise in trust, terms of which are subject to testator's future directions. 24 A.L.R. 177.

Wills — Competency of husband or wife of beneficiary as attesting witness to will. 25 A.L.R. 308.

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CLASSICS OF THE BAR, Volume VII. (Classic Publishing Company, Baxley, Georgia.) By Alvin V. Sellers	\$3
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The latest volume in this series of well-selected trials and forensic masterpieces contains the trials of the Earl of Strafford and Daniel E. Sickles, and addresses in the Russell will case, the Zenger libel case, and the Brown-Davidson damage suit.

Greek Law and Modern Jurisprudence are discussed by George Miller Calhoun in the California Law Review for July, 1923. He denies "the oft-repeated dictum that jurisprudence is an invention of the Romans," and points out the Attic law, inspired by "the new ethical philosophies of Socrates and his contemporaries," and "reaching the acme of its perfection in the intellectual awakening of the late fifth century, with its fine freedom of thought."

Mr. Calhoun states that "we have in Attic law a straightforward, consistent, logical embodiment of the political principles of democracy that finds no parallel in history; and if we are to look to history for instruction in approaching our own judicial problems, we should turn first and foremost to ancient Athens."

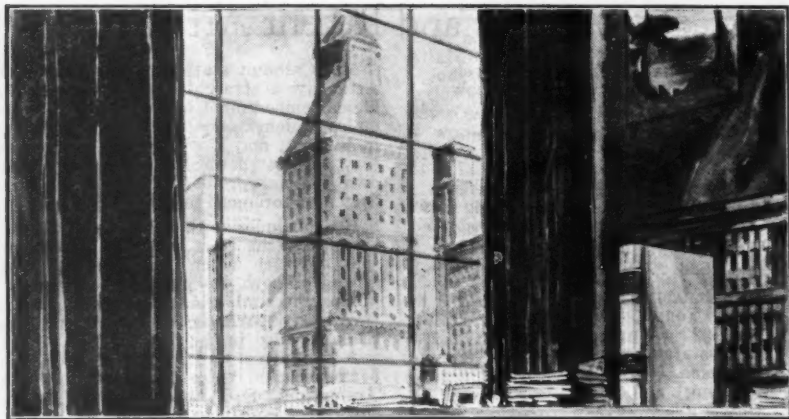
He concludes with the potent suggestion that "the time has come to realize that the race which taught us much of all we know to-day—of government, philosophy and science, art and literature—may perhaps have something to teach us also in the law."

A thoughtful paper by Prof. E. F. Albertsworth on "The Common Law in a Transitional Era" appears in the American Bar Association Journal for August, 1923. He notes that "in times past, the realm of philosophic thought has only gradually, if at all, affected the content of the law; to-day, on the contrary, this conservative social force has been compelled to recognize new and strange doctrines, and a great flood tide is upon us." He delineates the changes wrought in the social order by industrialism, by the use of scientific methods, and by the resulting rationalistic and social movements. "The recognition by the legal profession," he states, "that our present era is a transitional one is indispensable if the meaning or philosophy of present transformations in the law is to be grasped."

In "How Lawyers Think," which appeared in the Columbia Law Review for June, 1923, Mr. Nathan Isaacs discusses the difference in kind between the thinking that is useful for legal purposes and the thinking that is useful for some other purposes, and points out how the former came into being, and the extent to which the end of legal thinking has been served by the inherited logic of the law.

A pleasing picture of "The Golden Age of the Supreme Court" was drawn by James M. Beck, Solicitor General, at Gray's Inn Hall, London. He described the gladiatorial exhibitions of forensic skill in the old court,— "a court of leisure, deliberation, and dignity, where men had the time and took the pains to exhaust the possibilities of reasoning upon the great principles of order and liberty." This address may be found in 57 American Law Review, 599.

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Travels Out of the Record

A Poser. During the cross-examination of a witness in a case tried in an Iowa court, the examining lawyer demanded, rather pompously: "Now, sir, did you or did you not, on the day in question or at any other time, say to the defendant or anyone else that the statement imputed to you and denied by the plaintiff was a matter of no moment or otherwise? Answer me, yes or no."

The witness seemed bewildered. "Yes or no what?" he finally managed to gasp out.—Public Ledger.

A Colyumist's Choice. Meanwhile, if we are guilty of the offense charged, we shall elect to be tried by a jury of women. If innocent we shall demand a jury of men.

The Knot that Held Not. A clergyman united in matrimony two of his parishioners, a stalwart woman and a small weak man, not without inward misgivings as to the future happiness of the ill-assorted pair.

Nearly a year later the woman arrived at the parsonage in a state of fury. "You married us about ten months ago," she announced. "Well, my husband's escaped. What are you going to do about it?"

—Boston Daily Globe.

Lost in the Fog. Lawyer (to rattled witness)—"Did you, or did you not, on the aforementioned day, Tuesday, January Nineteenth, Eighteen Hundred and Ninety-six, feloniously and with malice aforethought listen at the keyhole of the third-floor rear apartment, then occupied as a residence by the defendant in this action on Ninetieth Street near Park Avenue, and did you not also on the Friday following the Tuesday in January be-

fore referred to in the year Eighteen Hundred and Ninety-six communicate to your wife the information acquired and repeat the conversation overhead as a result of your eavesdropping on that occasion with the result that the gossip of your wife gave wide and far currency to the overheard conversation before mentioned? Did you or did you not? Answer yes or no."

Witness—"Huh?"—Life.

For Self-Protection. Judge—Why did you jump into the fight? It was none of your affair.

Prisoner—That's true, your honor, but I had to take sides one way or the other. I couldn't take chances on being an innocent bystander.

—Boston Transcript.

Courtesy of the Road. Dilapidated Dodgework—"Pardon me, sir, but have you seen a policeman round here?"

Polite Pedestrian—"No. I am sorry."

Dilapidated Dodgework—"Thank you. Now, will you kindly hand over your watch and purse?"—Scotsman, Edinburgh.

Undiscovered. An indignant motorist wishes to know whether any one has ever seen a policeman serve a summons on a pedestrian who was disregarding traffic signals.

No, we never have! But neither have we ever seen a reckless pedestrian run over a motor car and destroy it.

—Life.

How He Knew. At the inquest on a traveler found dead on the bank of a river in Queensland, a witness testified as follows: "I passed the camp in the morning going to work. I noticed the bottle of whisky was full. I thought the man was asleep. When I returned in the evening and the bottle of whisky was still full, I knew the man was dead."

—Boston Transcript.

Annotations That Are Exhaustive Briefs

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Annotations That Are Exhaustive Briefs

A New Name for an Old Game.
—Hubb—"Haven't I always given you my salary check on the first of every month?"

Wiff—"Yes, but you never told me you got paid on the first and the fifteenth, you embezzler!"

—American Legion Weekly.

The Case Distinguished. Free State Patrol—"Have ye yer permit on ye for dhreven' the cyar?"

Motorist—"I have that. Are ye wantin' to see ut?"

Free State Patrol—"What for would I be wantin' to see ut if ye have ut? It's if ye had ut not that I'd want a look at ut."—Punch.

Summer Sports. The following letter was recently received by the collection department of a local house:

Gentlemen:—

I received your letter relative to the above matter dated May 23, 1922. I have your money at last, and got it only to-day. It has been a matter of great difficulty. In order to collect on execution, I had to wait until the gentleman went in swimming. In doing this act of ablution, the gentleman very carelessly devested himself of his wearing apparel and left it on the river bank, whereupon, at my direction, the sheriff grabbed all said apparel with the contents thereof, including a gold watch and a plug of chewing tobacco. On execution sale, we realized sufficient to pay your claim in full. There was a second hand pair of B. V. D.'s which it was unnecessary to sell, and these were returned to the debtor. They fitted him much better than the barrel he was then wearing.

I find your claim to be \$40.14 according to my accounts and am remitting that sum to you. I feel I ought to have \$10 for this work.

Yours truly,

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